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STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH
PUBLIC HEALTH HEARING OFFICE

In re: AIA Environmental Corporation

Petition No. 2000-0526-053-027

MEMORANDUM OF DECISION

Procedural History

On April 18, 2001, the Department of Public Health ("the Department") filed a Statement of Charges ("the Charges") against AIA Environmental Corporation ("respondent") notifying it that the Department was seeking an order revoking or imposing other disciplinary action against its asbestos contractor license ("the license"). H.O. Exh. 1.

On April 25, 2001, the Department issued a Notice of Hearing in which the Commissioner of the Department appointed this Hearing Officer to rule on all motions determine findings of fact and conclusions of law, and issue an order. H.O. Exh. 2.

On June 6, 2001, the Department filed a Motion to Deem Allegations Admitted. H.O. Exh. 3. On June 18, 2001, the undersigned denied that Motion without Prejudice. H.O. Exh. 4. On July 18, 2001 the Department filed another Motion to Deem Allegations Admitted that was granted on July 20, 2001. H.O. Exhs. 10, 11.

On July 24, 2001, an administrative hearing was held to adjudicate the Charges. The hearing was conducted in accordance with Chapter 54 of the Connecticut General Statutes ("the Statutes") and §§19a-9-1, et seq. of the Regulations of Connecticut State Agencies ("the Regulations"). Respondent neither appeared at the hearing nor requested that it be continued. Attorney Linda Fazzina represented the Department at the hearing.

This Proposed Memorandum of Decision is based entirely on the record and sets forth this Hearing Officer's findings of fact, conclusions of law, and order. To the extent

that the findings of fact actually represent conclusions of law, they should be so considered, and vice versa. *SAS Inst., Inc. v. S & H. Computer Systems, Inc.*, 605 F. Supp. 816 (M.D. Tenn. 1985).

Allegations

1. In paragraphs one, eleven, twenty one, twenty four, twenty eight, and thirty two of the Charges, the Department alleges that AIA Environmental Corporation of Astoria, New York (hereinafter "respondent") has been the holder of Connecticut asbestos contractor license number 000218. Said license was current at all times referenced in the Charges. Said license expired on or about September 30, 2000 and has not been renewed as of the date of the Charges.

Count One

2. In paragraph two of the Charges, the Department alleges that in or about the summer of 1999, respondent performed an asbestos abatement project at 106 Federal Road, Danbury, CT (hereinafter "the Danbury property").
3. In paragraph three of the Charges, the Department alleges that on or about July 21, 1999, in connection with the asbestos abatement project at the Danbury property, respondent violated Connecticut's standards applicable to the performance of asbestos abatement, which standards are found at §§19a-332a-1 to 19a-332a-16, inclusive, of the Regulations¹ (those sections of the Regulation will be referred to herein, collectively, as "the Connecticut Standards"), in one or more of the following ways, in that it:
 - a. failed to properly construct, operate and/or maintain a worker decontamination system;
 - b. failed to restrict work area access to authorized personnel afforded proper respiratory protection and/or protective clothing;
 - c. failed to provide negative pressure ventilation units with high efficiency particulate air (hereinafter "HEPA") filtration in a sufficient number to allow at least one air change every fifteen minutes in each work area;

¹ The Regulations pertaining to licensure and training requirements for persons engaged in asbestos abatement were amended on or about June 4, 1999. Unless otherwise noted, all references contained herein are to those regulations in effect after June 4, 1999.

- d. failed to cover all wall surfaces in the work area(s) with polyethylene sheeting or the equivalent;
 - e. failed to seal airtight, with polyethylene sheeting, all openings between the work area(s) and non-work area(s);
 - f. failed to ensure that no person or equipment leave the work area(s) unless first decontaminated and cleaned free of asbestos debris; and/or,
 - g. failed to post warning signs at all approaches to the work area(s).
4. In paragraph four of the Charges, the Department alleges that on or about July 23, 1999, in connection with the asbestos abatement project at the Danbury property, respondent violated the Connecticut Standards, in one or more of the following ways, in that it:
- a. failed to provide negative pressure ventilation units with HEPA filtration in sufficient number to allow at least one air change every fifteen minutes in each work area;
 - b. failed to seal airtight, with polyethylene sheeting, all openings between the work area(s) and non-work area(s);
 - c. failed to cover all wall surfaces in the work area(s) with polyethylene sheeting or the equivalent; and/or,
 - d. failed to post warning signs at all approaches to the work area(s).
5. In paragraph five of the Charges, the Department alleges that on or about July 26, 1999, in connection with the asbestos abatement project at the Danbury property, respondent violated the Connecticut Standards, in one or more of the following ways, in that it:
- a. failed to provide negative pressure ventilation units with HEPA filtration in a sufficient number to allow at least one air change every fifteen minutes in each work area; and/or,
 - b. failed to post warning signs at all approaches to the work area(s).
6. In paragraph six of the Charges, the Department alleges that on or about July 28, 1999, in connection with the asbestos abatement project at the Danbury property, respondent violated the Connecticut Standards, in one or more of the following ways, in that it:

- a. failed to provide negative pressure ventilation units with HEPA filtration in a sufficient number to allow at least one air change every fifteen minutes in each work area;
 - b. failed to ensure that all asbestos containing waste containers were labeled as asbestos waste and/or with applicable generator information;
 - c. failed to cover all wall surfaces in the work area(s) with polyethylene sheeting or the equivalent; and/or,
 - d. failed to post warning signs at all approaches to the work area(s).
7. In paragraph seven of the Charges, the Department alleges that on or about July 30, 1999, in connection with the asbestos abatement project at the Danbury property, respondent violated the Connecticut Standards, in one or more of the following ways, in that it:
- a. failed to provide negative pressure ventilation units with HEPA filtration in sufficient number to allow at least one air change every fifteen minutes; and/or,
 - b. failed to cover all wall surfaces in the work area(s) with polyethylene sheeting or the equivalent.
8. In paragraph eight of the Charges, the Department alleges that on or about August 12, 1999, in connection with the asbestos abatement project at the Danbury property, respondent violated the Connecticut Standards, in that it failed to comply with the reoccupancy criteria in §19a-332a-12 of the Regulations.
9. In paragraph nine of the Charges, the Department alleges that in or about the summer of 1999, respondent failed to pay the Department reinspection fees in connection with the asbestos abatement project at the Danbury property.
10. In paragraph ten of the Charges, the Department alleges that the above described facts constitute grounds for disciplinary action pursuant to §§20-440, 19a-332a(b) and/or 19a-332a(c) of the Statutes, taken in conjunction with §§19a-332a-1, 19a-332a-2, 19a-332a-5(a), 19a-332a-5(c), 19a-332a-5(e), 19a-332a-5(f), 19a-332a-5(h), 19a-332a-5(k), 19a-332a-6, 19a-332a-7(d), 19a-332a-12, 20-440-1, and/or 20-440-6(b) of the Regulations.

Count Two

11. In paragraphs twelve and twenty one of the Charges, the Department alleges that

in or about the summer of 1999, respondent performed an asbestos abatement project at 125 Danbury Road, Ridgefield, CT (hereinafter "the Ridgefield property").

12. In paragraph thirteen of the Charges, the Department alleges that on or about July 23, 1999, in connection with the asbestos abatement project at the Ridgefield property, respondent violated the Connecticut Standards, in one or more of the following ways, in that it:
 - a. failed to properly construct, operate and/or maintain a worker decontamination system;
 - b. failed to ensure that no person or equipment leave the work area(s) unless first decontaminated and cleaned free of asbestos debris;
 - c. failed to ensure that all asbestos containing waste was adequately wetted and/or placed in leak-tight containers for disposal;
 - d. failed to restrict work area access to authorized personnel afforded proper respiratory protection and/or protective clothing;
 - e. failed to provide negative pressure ventilation units with HEPA filtration in a sufficient number to allow at least one air change every fifteen minutes in each work area;
 - f. failed to seal airtight, with polyethylene sheeting, all openings between the work area(s) and non-work area(s);
 - g. failed to remove all moveable objects from the work area(s);
 - h. failed to cover all wall surfaces in the work area(s) with polyethylene sheeting or the equivalent;
 - i. failed to post warning signs at all approaches to the work area(s);
 - j. removed asbestos containing floor tile from office areas on the first floor of the building on the Ridgefield property without establishing regulated work area(s) by using airtight barriers and wall polyethylene sheeting as required in §§19a-332a-5(c) and 19a-332a-5(e) of the Regulations; and/or,
 - k. failed to comply with the reoccupancy criteria in §19a-332a-12 of the Regulations in that air sample results were not available for the office areas described in Paragraph 13(i) above.

13. In paragraph fourteen of the Charges, the Department alleges that on or about July 26, 1999, in connection with the asbestos abatement project at the Ridgefield property, respondent violated the Connecticut Standards, in one or more of the following ways, in that it:
 - a. failed to ensure that all asbestos containing waste was adequately wetted and/or placed in leak-tight containers for disposal;
 - b. failed to ensure that no person leave a work area without first decontaminating by showering, wet washing or HEPA vacuuming to remove all asbestos debris;
 - c. failed to provide negative pressure ventilation units with HEPA filtration in sufficient number to allow at least one air change every fifteen minutes in each work area;
 - d. failed to isolate work area(s) from non-work area(s) with airtight barriers attached securely in place;
 - e. failed to cover all wall surfaces in the work area(s) with polyethylene sheeting or the equivalent; and/or,
 - f. failed to post warning signs at all approaches to the work area(s).
14. In paragraph fifteen of the Charges, the Department alleges that on or about July 28, 1999, in connection with the asbestos abatement project at the Ridgefield property, respondent violated the Connecticut Standards, in one or more of the following ways, in that it:
 - a. failed to provide negative pressure ventilation units with HEPA filtration in a sufficient number to allow at least one air change every fifteen minutes in each work area;
 - b. failed to cover all wall surfaces in the work area(s) with polyethylene sheeting or the equivalent;
 - c. failed to post warning signs at all approaches to the work area(s);
 - d. failed to ensure that all asbestos containing waste was adequately wetted and/or placed in leak-tight containers for disposal; and/or,

- e. failed to ensure that all asbestos containing waste containers were labeled as asbestos waste and/or with applicable generator information.
15. In paragraph sixteen of the Charges, the Department alleges that on or about July 30, 1999, in connection with the asbestos abatement project at the Ridgefield property, respondent violated the Connecticut Standards, in one or more of the following ways, in that it:
- a. removed asbestos containing floor tile from office areas on the second floor of the building on the Ridgefield property without establishing regulated work area(s) by using airtight barriers and wall polyethylene sheeting as required in §§19a-332a-5(c) and 19a-332a-5(e) of the Regulations;
 - b. failed to comply with the reoccupancy criteria in §19a-332a-12 of the Regulations in that air sample results were not available for the office areas described in Paragraph 16(a) above;
 - c. failed to provide negative pressure ventilation units with HEPA filtration in a sufficient number to allow at least one air change every fifteen minutes in each work area;
 - d. failed to cover all wall surfaces in the work area(s) with polyethylene sheeting or the equivalent;
 - e. failed to seal airtight, with polyethylene sheeting, all openings between the work area(s) and non-work area(s); and/or,
 - f. failed to shut down, lock out and isolate the heating, ventilating and air conditioning system(s) within the work area(s) to prevent contamination of and fiber dispersal to other areas of the building on the Ridgefield property.
16. In paragraph seventeen of the Charges, the Department alleges that on or about August 6, 1999, in connection with the asbestos abatement project at the Ridgefield property, respondent violated the Connecticut Standards, in that it failed to comply with the reoccupancy criteria in §19a-332a-12 of the Regulations.
17. In paragraph eighteen of the Charges, the Department alleges that from on or about August 7, 1999 through August 8, 1999, in connection with the removal of asbestos containing floor tile mastic at the Ridgefield property, respondent violated the Connecticut Standards in one or more of the following ways, in that it:
- a. failed to isolate the work area(s) from non-work area(a) with airtight barriers attached securely in place;

- b. failed to cover all wall surfaces in the work area(s) with polyethylene sheeting or the equivalent;
 - c. failed to provide negative pressure ventilation units with HEPA filtration in a sufficient number to allow at least one air change every fifteen minutes in each work area; and/or,
 - d. failed to comply with the reoccupancy criteria in §19a-332-12 of the Regulations.
18. In paragraph nineteen of the Charges, the Department alleges that in or about the summer of 1999, respondent failed to pay the Department reinspection fees in connection with the asbestos abatement project at the Ridgefield property.
19. In paragraph twenty of the Charges, the Department alleges that the above described facts constitute grounds for disciplinary action pursuant to §§20-440, 19a-332a(b) and/or 19a-332a(c) of the Statutes, taken in conjunction with §§19a-332a-1, 19a-332a-2, 19a-332a-5(a), 19a-332a-5(b), 19a-332a-5(c), 19a-332a-5(d), 19a-332a-5(e), 19a-332a-5(f), 19a-332a-5(h), 19a-332a-5(j), 19a-332a-5(k), 19a-332a-6, 19a-332a-7(d), 19a-332a-12, 20-440-1 and/or 20-440-6(b) of the Regulations.

Count Three

20. In paragraph twenty-two of the Charges, the Department alleges that in or about the summer of 1999, the services provided by respondent at the Ridgefield property were below an acceptable standard of care in one or more of the following ways:
- a. Respondent failed to comply with an alternative work practice application that was approved by the Department on or about July 19, 1999; and/or, _ _
 - b. Respondent utilized work practices that were previously denied by the Department, in or about June 1999, in connection with alternative work practice application(s) submitted by respondent and/or a licensed asbestos consultant – project designer hired by respondent for asbestos abatement projects at 2380 Dixwell Avenue, Hamden, CT, 1075 West Main Street, Branford, CT and 1248 South Broad Street, Wallingford, CT.
21. In paragraph twenty-three of the Charges, the Department alleges that the above

described facts constitute grounds for disciplinary action pursuant to §§20-440 and/or 19a-332a(b) of the Statutes, taken in conjunction with §§19a-332a-1, 19a-332a-2, 19a-332a-11, 20-440-1 and/or 20-440-6(b) of the Regulations.

Count Four

22. In paragraph twenty-five of the Charges, the Department alleges that in or about the summer of 1999, respondent performed an asbestos abatement project at 290 Tunxis Hill Road, Fairfield, CT (hereinafter "the Fairfield property").
23. In paragraph twenty-six of the Charges, the Department alleges that on or about August 10, 1999, in connection with the asbestos abatement project at the Fairfield property, respondent violated the Connecticut Standards, in one or more of the following ways, in that it:
 - a. failed to restrict work area access to authorized personnel afforded proper respiratory protection and protective clothing;
 - b. failed to ensure that no person leave a work area without first decontaminating by showering, wet washing or HEPA vacuuming to remove all asbestos debris;
 - c. failed to seal airtight, with polyethylene sheeting, all openings between the work area(s) and the non-work area(s);
 - d. failed to remove all moveable objects from the work area(s);
 - e. failed to shut down, lock out and isolate the heating, ventilating and air conditioning system(s) within the work area(s) to prevent contamination of and fiber dispersal to other areas of the building on the Fairfield property;
 - f. failed to cover all wall surfaces in the work area(s) with polyethylene sheeting or the equivalent; and/or,
 - g. failed to cover all non-movable objects in the work area(s) with a minimum of six (6) mil polyethylene sheeting secured in place.
24. In paragraph twenty-seven of the Charges, the Department alleges that the above facts constitute grounds for disciplinary action pursuant to §§20-440 and/or 19a-332a(b) of the Statutes, taken in conjunction with §§19a-332a-1, 19a-332a-2, 19a-332a-5(b), 19a-332a-5(c), 19a-332a-5(d), 19a-332a-5(e), 19a-332a-5(f), 19a-332a-6, 20-440-1 and/or 20-440-6(b) of the Regulations.

Count Five

25. In paragraph twenty nine of the Charges, the Department alleges that in or about the summer of 1999, respondent performed an asbestos abatement project at 500 Connecticut Avenue, Norwalk, CT (hereinafter "the Norwalk property").
26. In paragraph thirty of the Charges, the Department alleges that on or about August 3, 1999, in connection with the asbestos abatement project at the Norwalk property, respondent violated the Connecticut Standards, in one or more of the following ways, in that it:
 - a. failed to provide negative pressure ventilation units with HEPA filtration in a sufficient number to allow at least one air change every fifteen minutes in each work area;
 - b. failed to ensure that all asbestos containing material to be removed or disturbed by removal was adequately wetted;
 - c. failed to seal airtight, with polyethylene sheeting, all openings between the work area(s) and the non-work area(s);
 - d. failed to ensure that all asbestos containing waste was adequately wetted and/or placed in leak-tight containers for disposal; and/or,
 - e. failed to restrict work area access to authorized personnel afforded proper respiratory protection and protective clothing.
27. In paragraph thirty-one of the Charges, the Department alleges that the above facts constitute grounds for disciplinary action pursuant to §§20-440 and/or 19a-332a(b) of the Statutes, taken in conjunction with §§19a-332a-1, 19a-332a-2, 19a-332a-5(c), 19a-332a-5(f), 19a-332a-5(h), 19a-332a-5(j), 19a-332a-7(a), 20-440-1 and/or 20-440-6(b) of the Regulations.

Count Six

28. In paragraph thirty-three of the Charges, the Department alleges that in or about the winter of 2000, respondent performed an asbestos abatement project at 230 East Avenue, Norwalk, CT (hereinafter "the East Ave. property").
29. In paragraph thirty-four of the Charges, the Department alleges that on or about February 24, 2000, in connection with the asbestos abatement project at the East Ave. property, respondent violated the Connecticut Standards, in one or more of the following ways, in that it:

- a. failed to seal airtight, with polyethylene sheeting, all openings between the work area(s) and the non-work area(s); and/or
 - b. failed to post warning signs at all approaches to the work area(s).
30. In paragraph thirty-five of the Charges, the Department alleges that the above facts constitute grounds for disciplinary action pursuant to §§20-440 and/or 19a-332a(b) of the Statutes, taken in conjunction with §§19a-332a-1, 19a-332a-2, 19a-332a-5(a), 19a-332a-5(c), 20-440-1 and/or 20-440-6(b) of the Regulations.

Findings of Fact

- 1. The Department made all reasonable efforts to locate respondent and to serve the Notice of Hearing. H.O. Exhs. 6, 10.
- 2. Pursuant to the undersigned's Ruling of July 20, 2001, granting the Department's Motion of July 18, 2001 to Deem the Allegations Admitted, all of the allegations are deemed admitted and true. H.O. Exhs. 10, 11.
- 3. Respondent's violations posed a serious health threat to respondent's employees and the general public. Dept. Exhs. 1-3; Tr. pp. 12-18.

Discussion and Conclusions of Law

Pursuant to §§19a-14 and 19a-17 of the Statutes, the Department has the authority to discipline asbestos contractors including, but not limited to, the authority to revoke a license. Further, pursuant to §19a-332e of the Statutes and §20-440-6 of the Regulations, the Department may assess an asbestos contractor a civil penal of up to \$25,000. —

In establishing the underlying violation to support such discipline, the Department bears the burden of proof by a preponderance of the evidence. *Swiller v. Comm'r. of Public Health*, CV-950705601, Superior Court, J.D. Hartford/New Britain at Hartford, October 10, 1995; *Steadman v. SEC*, 450 U.S. 91, 101 S. Ct. 999, reh'g den., 451 U.S. 933 (1981); *Bender v. Clark*, 744 F. 2d 1424 (10th Cir. 1984); *Sea Island Broadcasting Corp. v. F.C.C.*, 627 F. 2d 240, 243 (D.C. Cir. 1980); all as cited in *Bridgeport*

Ambulance Service, Inc., v. Connecticut Dept. of Health Services, No. CV 88-0349673-S (Sup. Court, J.D. Hartford/New Britain at Hartford, July 6, 1989); *Swiller v. Commissioner of Public Health*, No. CV 95-0705601 (Sup. Court, J.D. Hartford/New Britain at Hartford, October 10, 1995).

In view of the granting of the Department's Motion to Deem Allegations Admitted, the Department has established the violations noted above by a preponderance of the evidence. The Department has requested that respondent's license be revoked and that it be assessed the maximum civil penalty of \$25,000. Because of respondent's total disregard for the regulatory requirements applicable to asbestos contractors, the repetitive and egregious nature of its violations, and the risk those violations presented to its employees and the general public, the request of the Department is both entirely reasonable and fully supported by the record.

Proposed Order

Based on the record in this case, the above Findings of Fact and Conclusions of Law, this Hearing Officer orders that: respondent's license number 000218 is hereby revoked; and, that respondent pay a civil penalty of \$25,000 by certified or cashier's check payable to "Treasurer, State of Connecticut." The check shall reference the Petition Number on the face of the check, shall be payable within thirty days of the date of this decision, and shall be addressed to the following:

Linda Fazzina, Staff Attorney
Legal Office MS#13LEG
Department of Public Health
P. O. Box 340308
Hartford CT 06134-0308



Donald H. Levenson, Esq.
Hearing Officer

10-31-01
Date